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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LIZA VISMANOS, an individual, and
RANDY ROSEN, an individual,

Plaintiffs,

vs.

PHILIPPE HOERLE-GUGGENHEIM,
an individual, DOES 1 through 10,
inclusive,

Defendants.

PHILIPPE HOERLE-GUGGENHEIM,
an individual,

Counter-Claimant,

vs.

LIZA VISMANOS, an individual;
RANDY ROSEN, an individual; and
ROES 1 through 10, inclusive,

Counter-Defendants.

Case No. 2:19-cv-01115-MWF(ASx)

The Hon. Michael W. Fitzgerald

**PLAINTIFFS' EX PARTE
APPLICATION FOR ENTRY OF
STIPULATED JUDGMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES; AND
DECLARATION OF JONATHAN P.
STEINSAPIR IN SUPPORT**

Filed Concurrently With: [Proposed]
Judgment Against Phillippe Hoerle-
Guggenheim; and Stipulation for Entry
of Judgment Against Philippe Hoerle-
Guggenheim

Action Filed: February 13, 2019
Trial Date: Not Set

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TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Liza Vismanos and Randy Rosen (“Plaintiffs”) hereby apply *ex parte* for entry of a stipulated judgment against Defendant Philippe Hoerle-Guggenheim (“Defendant”). The stipulated judgment is being submitted herewith (the blanks have been filled in by counsel).

Defendant stipulated to entry of judgment in a document entitled “Stipulation for Entry of Judgment Against Philippe Hoerle-Guggenheim” (Dkt. 23) being filed concurrently herewith. In that document, signed by both Defendant personally and his counsel, Defendant agreed that if he failed to make any monthly installment payments of a total Settlement Payment of \$320,000, after being given notice and an opportunity to cure, he would agree to entry of judgment against him for the amount outstanding along with Plaintiffs’ reasonable attorneys’ fees in preparing for and filing this *ex parte* application. *See* Stipulation for Entry of Judgment Against Philippe Hoerle-Guggenheim (“Stipulation for Entry of Judgment”) (Dkt. 23) at p. 3, ¶ 5. The parties’ Settlement Agreement also specifically provided for entry of a stipulated judgment if a payment was missed after Defendant was given an opportunity to cure. *See* Declaration of Jonathan P. Steinsapir (“Steinsapir Decl.”) p. 3, ¶ 4. Defendant has missed two consecutive monthly payments (due October 15 and November 15), and was given notice and an opportunity to cure both failures to make payment (and failed to cure). *See id.* at ¶¶ 5-7. Accordingly, for reasons set out more fully below in the attached Memorandum of Points and Authorities, Plaintiffs are entitled to judgment on their behalf in the amount of \$201,960 (representing the outstanding portion of the Settlement Payment of \$200,000 plus \$1,190 in reasonable attorneys’ fees). *Id.* at ¶¶ 9-10.

Good cause exists for entry of the proposed Judgment—and for doing so on an *ex parte* basis—for reasons explained above and, more fully, in the attached Memorandum of Points and Authorities. Defendant agreed, as part of the Stipulation for Entry of Judgment, that judgment may be entered in connection with the filing of

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1 an ex parte application. Stipulation for Entry of Judgment (Dkt. 23) at p. 3, ¶¶ 4-6.

2 Plaintiffs' counsel advised Defendant's counsel that they would be filing this
3 *ex parte* application first on November 27, 2019, and then on December 4, 2019.
4 Steinsapir Decl. at ¶ 8. Counsel did not say whether Defendant would oppose the
5 application, *ibid.*, but the parties previously stipulated that Defendant would only be
6 able to oppose this application on the basis that no opportunity to cure was given,
7 the payments were actually made, and/or that the amount of requested attorneys'
8 fees is unreasonable. Stipulation for Entry of Judgment (Dkt. 23) at p. 3, ¶ 6.

9 Contact information for Defendant's counsel is: Steven A. Heath
10 (saheath@heathsteinbeck.com), Uyen N. Nguyen (unguyen@heathsteinbeck.com),
11 Heath Steinbeck, LLP, 5777 W. Century Blvd., Ste. 765, Los Angeles, CA 90045,
12 Tel: (213) 335-6245; George Benaour (george@benaurlaw.com), Benaour Law, LLC,
13 43 West 43rd Street, Suite 225, New York, NY 10036, Tel: (609) 216-6105.

14 This application is made pursuant to the Court's inherent power to enforce
15 settlement agreements, when it retains jurisdiction to do so, and pursuant to
16 principles embodied in California Code of Civil Procedure § 664.6. This application
17 is based upon: this application and the proposed Judgment filed concurrently
18 herewith; the attached Declaration of Jonathan P. Steinsapir; the Stipulation for
19 Entry of Judgment (Dkt. 23), and all papers and pleadings on file in this action.

20
21 DATED: December 6, 2019

Respectfully Submitted:

22 KINSELLA WEITZMAN ISER
23 KUMP & ALDISERT LLP

24
25 By: /s/ Jonathan Steinsapir
26 Jonathan Steinsapir
27 Attorneys for Plaintiffs
28 Liza Vismanos and Randy Rosen

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

This action was filed on February 13, 2019. In a nutshell, the Complaint alleges that Defendant induced Plaintiffs to send him hundreds of thousands of dollars in order to procure artwork, including a piece by the late French Impressionist, Pierre-Auguste Renoir. Defendant then converted the money for his own use and did not deliver the art. *See, e.g.*, Complaint (Dkt. 1) at ¶ 5. The parties filed a notice of settlement on May 8, 2019, Dkt. 17, and then a stipulation to dismiss the case without prejudice on June 21, 2019. Dkt. 21. The stipulation requested that the Court retain jurisdiction to enforce the settlement agreement, and was signed by the parties themselves along with counsel. Dkt. 21 at p. 3.¹ The Court thereafter dismissed the case without prejudice, but expressly “retain[ed] jurisdiction over this action and over the Parties to enforce the provisions of the Parties’ Settlement Agreement ... should that become necessary.” Dkt. 22 at p. 2.

The parties’ written settlement agreement required Defendant to pay Plaintiffs \$320,000 in a series of installments: the first installment of \$45,000 was due on June 21, 2019, and then eleven monthly installments of \$25,000 were due on the fifteenth of every month from July 15, 2019 through May 15, 2020. Steinsapir Decl., Ex. 1, p. 2, ¶ 2. The Agreement provided that if Defendant missed a payment, Plaintiffs would give him five business days to cure. If Defendant failed to cure, Plaintiffs could file an *ex parte* application to have Judgment entered against Defendant in the amount outstanding. *Id.*, Ex. 1, p. 3, ¶ 4. As part of the Agreement, the parties, and

¹ The parties directly signed the stipulation due to California law providing that the actual parties themselves must sign a request to the Court to retain jurisdiction to enforce a settlement agreement. *Mesa RHF Partners, L.P. v. City of Los Angeles*, 33 Cal.App.5th 913, 918 (2019). Although these *procedural* requirements of California law are not binding on a federal court, *Retail Clerks Union Joint Pension Tr. v. Freedom Food Ctr., Inc.*, 938 F.2d 136, 137 (9th Cir. 1991), the parties complied with them in an abundance of caution.

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1 their counsel, also signed a Stipulation for Entry of Judgment, providing for the
2 same *and* providing that Plaintiffs would be entitled to their reasonable attorneys’
3 fees incurred in preparing the application. *Id.* Ex. 1, Ex. A (i.e., Exhibit A to the
4 Settlement Agreement) at p. 3 ¶¶ 4-6. With this application, Plaintiffs are filing that
5 Stipulation for Entry of Judgment at Docket 23.

6 With the exception of the initial payment, Defendant *failed* to make every
7 monthly installment payment due on the 15th of the month. Plaintiffs therefore gave
8 Defendant an opportunity to cure, and Defendants did cure on the last day to do so
9 for the months of July, August, and September. Steinsapir Decl. at ¶ 5.

10 Defendant then failed to make payment on October 15, 2019. Steinsapir Decl.
11 at ¶ 6. Plaintiffs gave notice and an opportunity to cure. *Id.*, Ex. 2. Defendant then
12 *purported to cure* by depositing a check with Plaintiffs’ counsel’s client trust account
13 at a local bank branch. *Id.* at ¶ 6. The check bounced but, due to a failure of
14 communication in counsel’s office, Plaintiffs and their counsel were not aware that
15 the check bounced until later in November. *Ibid.*

16 Defendant then failed to make payment on November 15, 2019. Plaintiffs
17 gave Defendant the requisite notice and opportunity to cure on November 18, 2019.
18 *Id.* at ¶ 7, Ex. 3. Defendant’s counsel contacted Plaintiffs’ counsel on November 22,
19 2019, and asked “for a few extra business days” to make payment. *Id.* at ¶ 6. By this
20 time, Plaintiffs had learned that the October check bounced, but nevertheless agreed
21 to give Defendant until the following Tuesday to make payment for both October
22 and November. No payment was made that Tuesday. *Ibid.* Indeed, no payments for
23 October and November have been made to date. *Id.* at ¶ 7. Plaintiffs’ counsel then
24 gave notice that Plaintiffs would be filing this application. *Id.* at ¶ 8. Defendant’s
25 counsel has not stated that they would oppose the application in any regard. *Ibid.*
26 And Defendant expressly agreed not to oppose this application except on the
27 grounds that payment was made, that breach was cured, or that the amount of
28 attorneys’ fees requested is not reasonable. Stipulation for Entry of Judgment (Dkt.

1 23) at p. 3, ¶ 6. None of these circumstances apply here.

2 **II. ARGUMENT**

3 **A. Plaintiffs Are Entitled to Judgment in the Amount of \$201,960**

4 “[A] federal court has jurisdiction to enforce a settlement agreement in a
5 dismissed case when the dismissal order incorporates the settlement terms, or the
6 court has retained jurisdiction over the settlement contract.” *Alvarado v. Table*
7 *Mountain Rancheria*, 509 F.3d 1008, 1017 (9th Cir. 2007), citing *Kokkonen v.*
8 *Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994). *See also* Cal. Code Civ.
9 Proc. § 664.6. Here, the Court’s order dismissing the case expressly provided that it
10 “retain[ed] jurisdiction over this action and over the Parties to enforce the provisions
11 of the Parties’ Settlement Agreement ... should that become necessary.” Dkt. 22 at
12 p. 2. The Court therefore has jurisdiction to enter judgment here. *Tiger Bay Vill.*
13 *Corp. v. Yihe Corp.*, No. CV 13-08837-RSWL-FFM, 2014 WL 3662259, at *4
14 (C.D. Cal. July 18, 2014) (entering judgment pursuant to settlement agreement
15 where defendant failed to make timely installment payments). *See also* *Grassroots*
16 *Prods. II, Inc. v. Young Money Entm’t, LLC*, No. CV 14-2807-GW(ASX), 2015 WL
17 12806466, at *4 (C.D. Cal. Oct. 1, 2015) (enforcing settlement agreement and
18 entering judgment thereon); *Walter v. W. Indus. Inc.*, No. SACV131503JLSANX,
19 2015 WL 12765552, at *5 (C.D. Cal. Mar. 25, 2015) (same).

20 Here, the parties plainly agreed that the Court could enter a stipulated
21 judgment in the amount due, plus attorneys’ fees expended to file an application to
22 have the judgment entered, if Defendant failed to make a monthly installment
23 payment when due so long as Defendant is given notice and five business days to to
24 cure. Steinsapir Decl., Ex. 1, p. 3, ¶ 4. Defendant failed to make payment on
25 November 15, 2019, and he has failed to make payment after being given *more than*
26 five business days to cure. *Id.* at ¶ 6, Ex. 3. Moreover, he also failed to make
27 payment on October 15, 2019, and then purported to make payment by check, but
28 his check bounced. *Id.* at ¶ 5, Ex. 2. Accordingly, pursuant to the terms of the

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1 Settlement Agreement, Judgment must be entered against him for the outstanding
2 amount of the \$320,000 payment. \$200,000 remains due of that payment.
3 Specifically, Defendant made the initial payment of \$45,000 on June 21, 2019, and
4 then three monthly payments of \$25,000 in July, August, and September. *Id.* at ¶ 4.
5 This totals \$120,000 in payments made, leaving \$200,000 due.

6 Plaintiffs are also entitled to their attorneys' fees in connection with the
7 preparation of this *ex parte* application because Defendant agreed to that as well, as
8 part of the Settlement Agreement in the Stipulation for Entry of Judgment. *See*
9 Stipulation for Entry of Judgment (Dkt. 23) at p. 3 ¶¶ 4-6. Undersigned counsel
10 spent more than four hours preparing this application and related papers at a reduced
11 rate of \$490 an hour. Steinsapir Decl. at ¶ 9. This rate is reasonable in this
12 community for attorneys of the undersigned's experience. *Id.* at ¶ 10. Accordingly,
13 an additional \$1,960 should be added to the Judgment. We have filled out the blanks
14 in the Stipulated Proposed Judgment accordingly. However, the Court may adjust
15 the amounts if it sees fit, and Plaintiffs are submitted a Microsoft Word copy of the
16 proposed Judgment with this application, as required by the Local Rules.

17 **B. Relief on an *Ex Parte* Basis Is Warranted**

18 Relief on an *ex parte* basis is warranted here.

19 First, Defendant expressly agreed to such a procedure in both the Settlement
20 Agreement and the Stipulation for Entry of Judgment. Steinsapir Decl., Ex. 1, p. 3,
21 ¶ 4; Stipulation for Entry of Judgment (Dkt. 23) at p. 3, ¶¶ 4-6. Defendant further
22 agreed that he would not oppose the application except on the grounds that payment
23 was made, the breach was cured, or that the amount of fees is not reasonable.
24 Stipulation for Entry of Judgment (Dkt. 23) at p. 3, ¶ 6. Not enforcing the parties'
25 agreement on this point would discourage parties from using the procedure used
26 here, which track California Code of Civil Procedure § 664.6, and cases would be
27 less likely to settle. *In re City Equities Anaheim, Ltd.*, 22 F.3d 954, 957 (9th Cir.
28 1994) (referring to "the 'high judicial favor' accorded the voluntary settlement of

1 disputes” as among the reasons favoring summary enforcement of settlement
2 agreements).

3 Second, requiring Plaintiffs to seek relief on a noticed motion would require
4 Plaintiffs to wait at least another month for a judgment. This would cost Plaintiffs a
5 significant amount of post-judgment interest (roughly \$1,800 at the post-judgment
6 rate of 10 percent). Furthermore, it would allow Defendant more time to hide assets
7 and evade enforcement of the Judgment.

8 Finally, entry of the *stipulated* Judgment here would seem to fall within the
9 third category of what the late Judge Rymer called the “extremely limited”
10 circumstances where *ex parte* applications are “legitimate.” *In re Intermagnetics*
11 *Am., Inc.*, 101 B.R. 191, 193 (C.D. Cal. 1989) (Rymer, J., sitting by designation). In
12 particular, Judge Rymer explained that *ex parte* applications “may be necessary
13 when a party seeks a routine order (e.g., to file an overlong brief or to shorten the
14 time within which a motion may be brought).” *Id.* at 194. Because this application
15 seeks entry of a *stipulated* Judgment, it is much closer to a request for entry of a
16 routine order than any other type of motion.

17 **III. CONCLUSION**

18 For the reasons stated, Plaintiffs respectfully request that the Court enter the
19 attached stipulated Judgment in the amount of \$201,960.

20 DATED: December 6, 2019

Respectfully Submitted:

21 KINSELLA WEITZMAN ISER
22 KUMP & ALDISERT LLP
23

24
25 By: /s/ Jonathan Steinsapir
Jonathan Steinsapir
26 Attorneys for Plaintiffs
27 Liza Vismanos and Randy Rosen
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DECLARATION OF JONATHAN STEINSAPIR

I, Jonathan Steinsapir, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am a partner with Kinsella Weitzman Iser Kump & Aldisert LLP, attorneys of record for Plaintiffs Liza Vismanos and Randy Rosen (“Plaintiffs”). If called as a witness, I could and would competently testify to all the facts within my personal knowledge except where stated upon information and belief.

2. The parties entered into a written Settlement Agreement as of June 11, 2019. A true and correct copy of that Settlement Agreement, styled “First Amended Settlement Agreement and Mutual General Releases” is attached hereto as **Exhibit 1**. It contains two exhibits (an Exhibit A and Exhibit B).

3. As noted in paragraph number 2, at page 2, of the Settlement Agreement, Defendant was required to pay Plaintiffs \$320,000 in a series of installments: the first installment of \$45,000 was due on June 21, 2019, and then eleven monthly installments of \$25,000 were to be paid on the fifteenth of every month from July 15, 2019 through May 15, 2020 (except where the fifteenth fell on a weekend or holiday, in which case payment was due the next business day).

4. Defendant made the first payment on June 21, 2019. Defendant failed to make payments when due on July 15, 2019, August 15, 2019, and September 16, 2019. I prepared a written notice to Defendant for failure to pay and demanded that Defendant cure. Defendant cured each of these breaches, on the last day possible for each.

5. Defendant then failed to make payment on October 15, 2019. As with before, I provided Defendant (through his counsel) notice of the failure to make payment and an opportunity to cure. A true and correct copy of this notice is attached hereto as **Exhibit 2**. Defendant *purported to cure* by depositing a check with my firm’s client trust account at a local bank branch. The check bounced (i.e., it was returned for insufficient funds) but, due to a a failure of communication in my

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1 office, my clients and I were not aware that the check bounced until later in
2 November.

3 6. Defendant failed to make payment on November 15, 2019. I gave
4 Defendant (through counsel) the requisite notice and opportunity to cure on
5 November 18, 2019. A true and correct copy of this notice is attached hereto as
6 **Exhibit 3**. Defendant's counsel, George Benaour, contacted me by email on
7 November 22, 2019, and asked "for a few extra business days" to make payment.
8 By this time, Plaintiffs had learned that the October check bounced, but nevertheless
9 agreed to give Defendant until the following Tuesday to make payment for both
10 October and November. No payment was made the following Tuesday.

11 7. No payments have been made to date for either October or November.

12 8. I advised counsel for Defendant, Steven A. Heath and George Benaour,
13 that Plaintiffs would be filing this *ex parte* application first on November 27, 2019,
14 and then again on December 4, 2019. In response to my advising counsel of this
15 application on November 27, Defendant's counsel, George Benaour, advised that he
16 would "inform [his] client" and further stated that if payment was made before the
17 filing of this application, it would be "moot." No such payment was ever made. I
18 received no response from Defendant's counsel to my December 4 notice that we
19 would be filing this application.

20 9. I spent over four hours preparing this application. This included
21 drafting and editing the application, researching applicable law relating to summary
22 enforcement of settlement agreements and entry of confessed judgments, reviewing
23 the factual record here, and reviewing and gathering the relevant documents. In this
24 matter, I am billing at a reduced rate of \$490 an hour.

25 10. I am a 2002 graduate of UCLA Law School, where I was elected to the
26 Order of the Coif. Following law school, I was a law clerk for the late Hon. Cynthia
27 Holcomb Hall of the U.S. Court of Appeals for the Ninth Circuit for the 2002-03
28 term. Following my clerkship with Judge Hall, I clerked for Judge Margaret M.

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1 Morrow of this Court for the 2003-04 term. Thereafter, I entered private practice,
2 first with the firm Irell & Manella LLP through mid- to late-2007. Thereafter I
3 joined Kinsella Weitzman Iser Kump & Aldisert, LLP, as an associate and was
4 elected to the partnership effective January 1, 2011. In this matter, I am billing at a
5 reduced rate of \$490 an hour. Because I have practiced law in this community for
6 roughly seventeen years (including my time as a judicial law clerk on the Ninth
7 Circuit and then the Central District), I am very familiar with rates for litigators in
8 this community. My billing rate on this matter is well below the market rate for a
9 litigator of my experience and credentials.

10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed December 6, 2019, at Santa Monica, California.

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14 /s/Jonathan P. Steinsapir
Jonathan P. Steinsapir
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EXHIBIT 1

**FIRST AMENDED SETTLEMENT AGREEMENT
AND MUTUAL GENERAL RELEASES**

This First Amended Settlement Agreement And Mutual General Releases (the “Agreement”) is made and entered into as of June 11, 2019 (the “Effective Date”) by and between Dr. Randy Rosen (“Rosen”) and Liza Vizmanos (“Vizmanos”) (collectively, “Plaintiffs”) on the one hand, and Philippe Hoerle-Guggenheim (“Guggenheim”), on the other hand. Rosen, Vizmanos, and Guggenheim are sometimes referred to collectively herein as the “Parties” and individually as a “Party.”

RECITALS

A. In the Summer and Fall of 2018, the Parties discussed Guggenheim’s potential acquisition of three pieces of artwork for Plaintiffs, by Pierre-Auguste Renoir, Retna, and CÉVÉ, respectively, (collectively, these three pieces of artwork are referred to as “the Artworks”) for Plaintiffs. Collectively, Rosen wired \$645,000 to Guggenheim so that Guggenheim could procure the Artworks along with appropriate commissions and then deliver the Artworks to Rosen;

B. In or around August 2018, Plaintiffs have been and remain in possession of a painting belonging to Guggenheim and entitled *Brimstone* (“Brimstone”) that Guggenheim lent to them at no cost;

C. On February 13, 2019, Plaintiffs filed a Complaint in United States District Court for the Central District of California, *Rosen, et al. v. Hoerle-Guggenheim, et al.*, Case No. 2:19-cv-01115-MWF-AS (the “Lawsuit”);

D. On March 13, 2019, Guggenheim filed in the Lawsuit a Counterclaim against Rosen and Vizmanos;

E. While the Parties deny any liability or wrongdoing, they wish to avoid further expense and litigation, to resolve the claims alleged in the Lawsuit, including, without limitation, those set forth in the Complaint and Counterclaim, and to settle and release any and all claims or counterclaims between them that do or may exist arising out of the Lawsuit;

F. As of April 16, 2019, the Parties entered into a Settlement Agreement and Mutual General Releases (“April 2019 Settlement Agreement”);

G. Guggenheim did not make payment of \$275,000 due on May 7, 2019 under the April 2019 Settlement Agreement. Rather than return to litigating, however, Plaintiffs are amenable to an amended agreement as follows;

H. The Parties wish to amend the April 2019 Settlement Agreement by entering into this Agreement; further, to the extent there is any conflict or inconsistency between this Agreement and the April 2019 Settlement Agreement, then the terms of this Agreement shall control;

I. In entering into this Agreement, no Party is relying upon any statement, representation, or promise of any other Party or any officer, director, agent, partner, employees, consultant, representative or attorney of or for any other Party in executing this Agreement or in making this Agreement, except as expressly stated in this Agreement.

COVENANTS AND RELEASES

NOW, THEREFORE, in consideration of the Recitals and mutual promises and covenants contained in this Agreement, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. No Admission of Liability. This Agreement is entered into for purposes of settlement and compromise only, and each Party expressly acknowledges and agrees that the other Party hereto has not admitted, and by execution or performance of this Agreement does not admit, any liability or obligation to the other Party, whether alleged in the Lawsuit's claims or counterclaims, or otherwise, except for the obligations created by this Agreement.

2. Payment. In consideration for the promises, representations, releases, and covenants contained herein, Guggenheim shall pay Plaintiffs Three Hundred And Twenty Thousand United States Dollars And 00/100 (\$320,000) ("the Settlement Payment"). The Settlement Payment shall be paid as follows:

(i) Forty-Five Thousand Dollars And 00/100 (US \$45,000.00) to be paid no later than June 21, 2019 (the "Initial Payment");

(ii) Eleven (11) payments of Twenty-Five Thousand United States Dollars And 00/100 (US \$25,000.00), each to be paid no later than the 15th of each following month (for the avoidance of doubt, the first monthly payment required hereunder shall be due no later than July 15, 2019 and the last no later than May 15, 2020, however, Guggenheim shall face no penalty if he pays more than \$25,000 in any given month.

The above payments to Plaintiffs shall be made by wire transfer as follows to the Kinsella Weitzman Iser Kump & Aldisert Client Trust Account:

Bank:	First Republic Bank
ABA:	321081669
Account No.:	997-0006-3771
Account name:	Kinsella Weitzman Iser Kump & Aldisert LLP Client Trust Account

3. Brimstone. Plaintiffs acknowledge that they are in possession of the Brimstone, which Guggenheim owns. Guggenheim agrees that Plaintiffs may retain possession of Brimstone as security for his payment of the full Settlement Payment as provided herein. Within five (5) business days of Guggenheim's payment of the full Settlement Payment to Plaintiffs, Plaintiffs will make the Brimstone available to Guggenheim (or someone acting under his direction) at a mutually convenient time when Guggenheim (or someone acting under his direction) will pick up the Brimstone.

4. Default; Stipulated Judgment. In the event that Guggenheim fails to make any payment set forth in Section 2(ii), then Plaintiffs shall notify Guggenheim of any such failure in accordance with the Notice provisions set forth in Section 22 of this Agreement. If Guggenheim then fails to make the required payment within five (5) business days of Plaintiffs providing such notification, then Guggenheim shall be deemed to be in breach of this Agreement ("Default"). Thereafter, Plaintiffs may apply *ex parte* to the Court for entry against Guggenheim of the "[Proposed] Judgment Against Phillippe Hoerle-Guggenheim" ("the Stipulated Judgment") attached hereto as Exhibit 1 to Exhibit A. Guggenheim shall not oppose the *ex parte* application except on the ground that payment was made at the time required or within five (5) business days of Plaintiffs providing notice to Guggenheim of failure to make payment. With Plaintiffs' *ex parte* application, Plaintiffs shall file the attached "Stipulation for Entry of Judgment Against Defendant Phillippe Hoerle-Guggenheim" attached hereto as Exhibit A. Prior to any Default, Plaintiffs' counsel shall hold the entirety of Exhibit A "in trust" and as further security for payment of the Settlement Payment. Further, Plaintiffs shall not file, record, or otherwise display in the public domain Exhibit A (or any part thereof) in any fashion, including, without limitation, submitting Exhibit A (or any part thereof) to any credit reporting agency. In the event that Plaintiffs file Exhibit A in accordance with the terms of this Agreement, Plaintiffs shall acknowledge all payments received from Guggenheim prior to Default and shall (a) reduce the amount of the requested Judgment to reflect any and all such payments or (b) file or record a Notice of Satisfaction of Judgment as to the amount of any and all such payments.

5. Dismissal of Lawsuit. Upon Plaintiffs' receipt of the Initial Payment, the Parties shall submit to the Court a Stipulation for Dismissal of the Lawsuit in its entirety without prejudice, pursuant to Federal Rules of Civil Procedure, Rule 41, which Stipulation shall also request that the Court retain jurisdiction to enforce the terms of this Agreement. The Stipulation shall be in the form attached hereto as Exhibit B. In the event that the Stipulated Judgment referred to in Paragraph 4 is not filed with the Court after proper notice and opportunity to cure, and within five business days of the final payment made by Guggenheim set out in Paragraph 2(ii), Plaintiffs shall file a stipulated dismissal of the action with prejudice.

6. Artwork by RETNA and CÉVÉ. Plaintiffs acknowledge receipt to their satisfaction of the painting by RETNA and the sculpture by the artist known as CÉVÉ, which items form part of the allegations in the Lawsuit.

7. Non-Disparagement; Public Statements. The Parties agree to refrain from any defamation, libel, or slander of the other, or tortious interference with the contract(s) and/or relationships of the other. So long as the Stipulated Judgment in Paragraph 4 is not filed with the Court after proper notice and opportunity to cure, the Parties further agree that they shall make no further statements or nonverbal communications regarding the Lawsuit, except that they may state that the "the matter has been resolved to all parties' mutual satisfaction" and that Guggenheim delivered the pieces by RETNA and CÉVÉ (as referenced in Paragraph 6 above) to Plaintiffs, or statements substantially similar thereto. The Parties further agree that this Agreement, or any of its provisions, shall not be dispersed, shared or disseminated to any third party, except: (a) as necessary to enforce any right(s) thereunder or implement any provision of the same, including but not limited to, in connection with potentially filing the Stipulated Judgment with the Court referred to in Paragraph 4 after proper notice and opportunity to cure;

(b) as reasonably necessary to the Parties' accountants, attorneys, and other agents in carrying out their respective duties to the Parties; (c) in response to a subpoena or other valid discovery request in which case the disclosing Party shall give notice to the other Party of the disclosure in advance of disclosure to the extent reasonably possible; and (d) as required by law.

8. Release by Plaintiffs. Subject to and conditioned on the Settlement Payment in Paragraph 2 being made, Plaintiffs hereby forever release Guggenheim, his assigns, heirs, beneficiaries, spouse, attorneys, and agents from any and all claims, causes of action, damages and any other obligation of any kind and nature, at law, in equity, or otherwise, arising out of the Lawsuit or the allegations in the Complaint and/or Counterclaim. In the event that Guggenheim fails to comply with any Payment obligations in Paragraph 2(ii) above, Plaintiffs' sole remedy shall be the filing and enforcement of the Stipulated Judgment referred to in Paragraph 4, along with the recovery of attorneys' fees in connection therewith.

9. Release by Guggenheim. Guggenheim hereby forever releases Plaintiffs, their assigns, heirs, beneficiaries, spouse, attorneys, and agents from any and all claims, causes of action, damages and any other obligation of any kind and nature, at law, in equity, or otherwise, arising out of the Lawsuit or the allegations in the Complaint and/or Counterclaim.

10. Waiver of Civil Code Section 1542. The Parties acknowledge that they may hereafter discover facts different from, or in addition to, those now known or believed to be true bearing upon the rights released in this Agreement. Notwithstanding the existence of any such different or additional facts, the Parties hereby agree that this Agreement shall remain in full force and effect. The Parties hereby waive any and all rights which they have or may have under the provisions of Section 1542 of the California Civil Code as now worded and as thereafter amended, along with any other similar principles of law in other jurisdictions. Section 1542 of the California Civil Code reads as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

11. Further Documents. The Parties agree to execute any further documents that may be reasonably necessary to effectuate the Parties' intent hereunder.

12. No Waiver. No waiver of any breach of a covenant, condition or promise of this Agreement shall be deemed to be a waiver of any other or subsequent breach of a covenant, condition or promise, whether of like or different nature.

13. Integration. This Agreement expresses the entire agreement of the Parties hereto. No recitals, promises, covenants, agreements, representations or warranties of any kind whatsoever have been made or have been relied upon by any party hereto, except as specifically set forth in this Agreement. All prior discussions and negotiations regarding the subject matter of this Agreement have been and are merged and integrated into, and are superseded by, this Agreement.

14. Written Modifications Only. This Agreement may not be modified in any way whatsoever, except in a writing signed by all Parties.

15. Construction of Agreement. This Agreement shall be construed as a whole according to its fair meaning. The headings used in this Agreement are for reference only and shall not affect the construction of the Agreement.

16. Jointly Drafted. This Agreement shall be deemed negotiated and drafted jointly by the Parties hereto, and shall not be strictly construed for or against any of the Parties hereto, and none of the Parties shall be deemed to be the sole drafter.

17. Severability. The parties agree that in the event that any provision of this Agreement should be held by a court of competent jurisdiction to be void, voidable, illegal and/or unenforceable in any respect, the remaining provisions shall nevertheless remain in full force and effect.

18. Choice of Law. This Agreement shall be construed in accordance with, and governed by, the internal laws of the State of California without any reference to its conflict of laws provisions.

19. Forum Selection. Venue and jurisdiction over any judicial action to enforce this Agreement, or any other action arising out of or in any way relating to this Agreement, shall lie exclusively in the state and federal courts of Los Angeles County, California.

20. Attorneys' Fees. The Parties agree that they shall bear their own costs, expenses and attorneys' fees relating to the Action, the April 2019 Settlement Agreement, and to the negotiation and execution of this Agreement. In any subsequent legal proceeding between the Parties that may arise out of or relate to this Agreement, the prevailing party shall be entitled to recover its costs, expenses, and reasonable attorneys' fees.

21. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Plaintiffs and Guggenheim, along with their respective successors and assigns.

22. Communications. All written communications that are required or otherwise may be given under this Settlement Agreement shall be deemed delivered and given upon e-mail transmission thereof, along with a copy of any such notice being sent the same day (or the next business day if business is closed at the time of email transmission) by overnight or personal delivery, to the people and addresses shown below:

As to Guggenheim, address to:

George Benaour, Esq.
BENAOUR LAW LLC
150 West 56th Street
New York, New York 10019
Tel: (609) 216-6105
Email: george@benaurlaw.com

As to Plaintiffs, address to:

Jonathan P. Steinsapir, Esq.
Kinsella Weitzman Iser Kump & Aldisert LLP
808 Wilshire Blvd, Third Floor
Los Angeles, CA 90401
Tel: (310) 566-9800
Email: jsteinsapir@kwikalaw.com

All such written communications shall be considered completed and made on the date of transmission of the email to the above addressees. From time to time, either Party may substitute a different representative than the attorneys listed above to receive any notice, request, instruction, or document to be provided under this agreement. The Party shall advise the other Party in writing of a change in that Party's representative.

23. Counterparts. This Agreement may be executed by way of one or more counterparts, each of which shall be deemed an original, but all of which together constitute one agreement among the parties hereto. Each of the Parties hereto agrees that email transmission of a signature on this document shall constitute a valid execution of this document, and shall be sufficient to formally bind, at the time of transmission, the party whose signature was transmitted by fax or email.

24. Recitals. The Recitals are contractual in nature and made a part of the Agreement by this reference.

IN WITNESS WHEREOF, the Parties have approved and executed this Settlement Agreement on the dates set forth opposite his, her or its respective signatures.

EXECUTED by the Parties as follows:



Randy Rosen

06/20/2019
Dated: _____



Liza Vizmanos

06/20/2019
Dated: _____



Philippe Moerle-Guelpenheim

Dated: 6/20/2019

11573.00002649551

EXHIBIT A

1 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
Jonathan P. Steinsapir (SBN 226281)
2 jsteinsapir@kwikalaw.com
808 Wilshire Boulevard, 3rd Floor
3 Santa Monica, California 90401
Telephone: 310.566.9800
4 Facsimile: 310.566.9850

5 Attorneys for Plaintiffs
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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 LIZA VISMANOS, an individual, and
13 RANDY ROSEN, an individual,

14 Plaintiffs,

15 vs.

16 PHILIPPE HOERLE-GUGGENHEIM,
17 an individual,

18 Defendant.
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Case No. 2:19-cv-01115-MWF-AS

**STIPULATION FOR ENTRY OF
JUDGMENT AGAINST
DEFENDANT PHILLIPPE
HOERLE-GUGGENHEIM**

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 This Stipulation for Entry of Judgment Against Defendant Phillippe Hoerle-
2 Guggenheim is entered into by and between Plaintiffs Liza Vismanos and Randy
3 Rosen (collectively "Plaintiffs"), on the one hand, and Defendant Philippe Hoerle-
4 Guggenheim ("Defendant"), on the other hand, with reference to the facts and
5 circumstances set out below. The Plaintiffs and Defendants are sometimes
6 collectively referred to herein as the "Parties" or individually as a "Party."

7 WHEREAS, in April 2019, the Parties settled this action and entered into a
8 written Settlement Agreement and then a written Amended Settlement Agreement
9 (collectively, the "Agreement").

10 WHEREAS, as part of the Agreement, the Parties filed a Stipulation of
11 Dismissal Without Prejudice asking the Court to retain jurisdiction of the Parties and
12 this Action after which the Court entered such an Order.

13 WHEREAS, pursuant to the terms of the Agreement, Defendant was required
14 to pay \$320,000 to Plaintiffs in twelve installments, the first for \$45,000 due upon
15 execution of the Amended Settlement Agreement, and the remaining eleven
16 installments of no less than \$25,000 to be paid monthly on the 15th of each month
17 (or the first business day thereafter if the 15th is not a business day), commencing on
18 July 15, 2019 and ending on May 15, 2020 (each installment is referred to herein as
19 a "Monthly Settlement Payment"). The Parties agreed that if Defendant failed to
20 timely make a Monthly Settlement Payment then Plaintiffs would be entitled to have
21 Judgment entered against Defendant on the terms provided herein.

22 Based upon the foregoing, IT IS THEREFORE STIPULATED AND
23 AGREED THAT:

24 1. In the event that Defendant breaches the Agreement by failing to make
25 a Monthly Settlement Payment on the 15th of each month (or the first business day
26 thereafter if the 15th is not a business day), commencing on July 15, 2019, and
27 ending on May 15, 2020 then Defendant shall be in breach of the Agreement
28 ("Breach").

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

2. In the event of Breach, Plaintiffs shall give written notice of the Breach to Defendant as provided in the Agreement (“the Notice”).

3. Defendant shall have five business days after receipt of the Notice to cure the Breach by paying to Plaintiffs the full amount of the Monthly Settlement Payment then due (the “Cure Period”).

4. In the event that Defendant does not cure the Breach within the Cure Period, Plaintiffs shall be entitled to file an *ex parte* application with the Court, with notice provided pursuant to the Local Rules of the Court, representing that Defendant is in Breach under the Agreement, and requesting that judgment be entered against Defendant as set forth in the [Proposed] Judgment attached hereto as Exhibit 1.

5. Upon filing the *ex parte* application, Plaintiffs shall fill in the first blank space on Exhibit 1 with the sum of all unpaid Monthly Settlement Payments from the date of Breach to May 15, 2020. Plaintiffs shall also be entitled to an award of their reasonable attorneys’ fees incurred in connection with the Breach, the Notice, and the preparation and filing of the *ex parte* application (and any subsequent pleadings associated with it). The Court may fill in the second blank in the amount of attorneys’ fees it deems appropriate, and then fill in the third blank with the sum of the first two numbers (i.e., the sum of both the awarded attorneys’ fees and the Monthly Settlement Payments from the date of Breach to May 15, 2020).

6. Defendant shall not oppose the *ex parte* application or contest the entry of the [Proposed] Judgment except on the grounds that: (1) Defendant is not in Breach because he did in fact make the Monthly Settlement Payment at issue when it was due; (2) Defendant cured the Breach within the Cure Period; and/or (3) the amount of requested attorneys’ fees is not reasonable.

7. Defendant agrees that the entry of the [Proposed] Judgment attached hereto as Exhibit 1—as modified as set out in Paragraph 5 above—shall be binding

1 and final, and Defendant further agrees to waive the right to appeal, or otherwise
2 attack or object to, the entry of the [Proposed] Judgment attached hereto as Exhibit 1
3 (as modified as set out in Paragraph 5 above).

4 8. An email, scanned, or electronic signature on this Stipulation shall be
5 deemed the equivalent of an original "wet" signature.

6 **IT IS SO STIPULATED AND AGREED.**

7
8 DATED: June 20, 2019

By


Plaintiff Liza Vismanos

9
10 DATED: June 20, 2019

By


Plaintiff Randy Rosen

11
12 DATED: June 20, 2019

By


Defendant Phillippe Hoerle-Guggenheim

13
14 DATED: June 20, 2019

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

15
16
17
18
19 By: 

Jonathan Steinsapir

Attorneys for Plaintiffs

Liza Vismanos and Randy Rosen

20
21
22 DATED: June 20, 2019

HEATH STEINBECK, LLP

23
24
25 By: 

Steven A. Heath

Attorneys for Defendant

Phillippe Hoerle-Guggenheim

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28 11571 00002649669

EXHIBIT 1

(To Stipulation for Entry of Judgment Against Defendant Phillippe Hoerle-Guggenheim)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

LIZA VISMANOS, an individual, and
RANDY ROSEN, an individual,

Plaintiffs,

vs.

PHILIPPE HOERLE-GUGGENHEIM,
an individual,

Defendant.

Case No. 2:19-CV-01115-MWF-AS

**[PROPOSED] JUDGMENT
AGAINST PHILLIPPE HOERLE-
GUGGENHEIM**

JUDGMENT

Based upon the Stipulation for Entry of Judgment Against Defendant Phillippe Hoerle-Guggenheim entered into by and between Plaintiffs Liza Vismanos and Randy Rosen (collectively "Plaintiffs"), on the one hand, and Defendant Philippe Hoerle-Guggenheim ("Defendant"), on the other hand, and for good cause,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Judgment is hereby entered in favor Plaintiffs Liza Vismanos and Randy Rosen, and against Defendant Phillippe Hoerle-Guggenheim in the amount of _____ dollars, representing the total of unpaid Monthly Settlement Payments, along with an award of attorneys' fees in the amount of _____ dollars, for a total of _____ dollars.

2. Post-judgment interest shall accrue at 10 percent per annum from the date of entry of this Judgment in accordance with California Code of Civil Procedure § 685.010.

IT IS SO ORDERED.

DATED: _____

Hon. Michael W. Fitzgerald
United States District Judge

11573.00002/649672

EXHIBIT B

1 KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
Jonathan P. Steinsapir (SBN 226281)
2 jsteinsapir@kwikalaw.com
808 Wilshire Boulevard, 3rd Floor
3 Santa Monica, California 90401
Telephone: 310.566.9800
4 Facsimile: 310.566.9850

5 Attorneys for Plaintiffs

6
7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 LIZA VISMANOS, an individual, and
12 RANDY ROSEN, an individual,

13 Plaintiffs,

14 vs.

15 PHILIPPE HOERLE-GUGGENHEIM,
16 an individual,

17 Defendant.

Case No. 2:19-cv-01115-MWF-AS

**JOINT STIPULATION
REQUESTING DISMISSAL OF
THE ACTION WITHOUT
PREJUDICE WITH THE COURT
RETAINING JURISDICTION TO
ENFORCE SETTLEMENT
AGREEMENT**

**[PROPOSED] ORDER
SUBMITTED CONCURRENTLY
HEREWITH**

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STIPULATION OF DISMISSAL WITHOUT PREJUDICE WITH COURT RETAINING JURISDICTION TO
ENFORCE SETTLEMENT AGREEMENT

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.9850

1 This Joint Stipulation Requesting Dismissal Of The Action Without Prejudice
2 With The Court Retaining Jurisdiction To Enforce Settlement Agreement is entered
3 into by and between Plaintiffs Liza Vismanos and Randy Rosen (collectively
4 “Plaintiffs”), on the one hand, and Defendant Philippe Hoerle-Guggenheim
5 (“Defendant”), on the other hand, with reference to the facts and circumstances set
6 out below. The Plaintiffs and Defendants are sometimes collectively referred to
7 herein as the “Parties” or individually as a “Party.”

8 WHEREAS, in April 2019, the Parties settled this action and thereafter
9 entered into a written Settlement Agreement and then a written Amended Settlement
10 Agreement (collectively, the “Agreement”).

11 WHEREAS, pursuant to the terms of the Agreement, the Parties wish the
12 Court to retain jurisdiction over this action and over the Parties to enforce the
13 provisions of the Agreement between the Parties should that become necessary.

14 THEREFORE, SUBJECT TO THE APPROVAL OF THIS COURT, THE
15 PARTIES HEREBY STIPULATE AND AGREE TO THE FOLLOWING:

16 1. That the Court will dismiss the Action in its entirety, including all
17 claims and counterclaims asserted therein;

18 2. That the dismissal shall be without prejudice;

19 3. That the Court will retain jurisdiction over this action and over the
20 Parties to enforce the provisions of the Agreement between the Parties should that
21 become necessary.

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KINSELLA WEITZMAN ISER KUMP & ALDISERT LLP
808 WILSHIRE BOULEVARD, 3RD FLOOR
SANTA MONICA, CALIFORNIA 90401
TEL 310.566.9800 • FAX 310.566.0860

1 SO STIPULATED AND REQUESTED.¹

2
3 DATED: June 20, 2019

By

Plaintiff Liza Vismanos

4
5 DATED: June 20, 2019

By

Plaintiff Randy Rosen

6
7 DATED: June 20, 2019

By

Defendant Phillippe Hoerle-Guggenheim

8
9 DATED: June 20, 2019

KINSELLA WEITZMAN ISER
KUMP & ALDISERT LLP

10
11 By: Jonathan P. Steinsapir

Jonathan Steinsapir
Attorneys for Plaintiffs
Liza Vismanos and Randy Rosen

12
13
14
15
16 DATED: June 20, 2019

HEATH STEINBECK, LLP

17
18 By: SAH

Steven A. Heath
Attorneys for Defendant
Phillippe Hoerle-Guggenheim

19
20
21 11573.00002/650015

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25 ¹ The parties are directly signing this stipulation due to California law
26 providing that the actual parties themselves must sign a request to the Court to retain
27 jurisdiction to enforce a settlement agreement. *Mesa RHF Partners, L.P. v. City of*
28 *Los Angeles*, 33 Cal.App.5th 913, 918 (2019). Although these procedural
requirements of California law are not binding on a federal court, *Retail Clerks*
Union Joint Pension Tr. v. Freedom Food Ctr., Inc., 938 F.2d 136, 137 (9th Cir.
1991), we are complying with them in an abundance of caution.

EXHIBIT 2



Jonathan Steinsapir
Direct Dial: (310) 566-9834
Direct Fax: (310) 566-9884
E-Mail: jsteinsapir@kwikalaw.com

October 18, 2019

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

George Benaour, Esq.
BENAOUR LAW LLC
43 West 43rd Street, Suite 225
New York, New York 10036
Tel: (609) 216-6105
E-Mail: george@benaourlaw.com

Re: Notice of Failure to Make Required Payment and Demand for Cure

Dear Mr. Benaour:

Reference is made to the First Amended Settlement Agreement and Mutual Releases ("the Agreement") dated June 11, 2019, between my clients, Dr. Randy Rosen and Liza Vismanos, on the one hand, and your client Philippe Hoerle-Guggenheim ("Guggenheim"), on the other.

Pursuant to Paragraph 2(ii) of the Agreement, Guggenheim was required to make payment of \$25,000 to my firm's client trust account by the close of business today. No such payment has been received.

Pursuant to Paragraphs 4 and 22 of the Agreement, Notice is hereby given that Guggenheim is in breach of the Agreement and if payment is not made within five business days—by the end of the day on October 25, 2019—Guggenheim shall be deemed to be in breach of the Agreement. Plaintiffs will therefore file the "Stipulation for Entry of Judgment Against Defendant Philippe Hoerle-Guggenheim," (Exhibit A to the Agreement) with the Court, along with other appropriate filings, on October 28, 2019 in accordance with the terms of the Agreement.

If you have any questions, please feel free to contact me.

Very truly yours,

Jonathan Steinsapir

George Benaour, Esq.
October 18, 2019
Page 2

cc: Steven A. Heath, Esq. (by email only to saheath@heathsteinbeck.com)

11573.00002/668418

EXHIBIT 3



Jonathan Steinsapir
Direct Dial: (310) 566-9834
Direct Fax: (310) 566-9884
E-Mail: jsteinsapir@kwikalaw.com

November 18, 2019

VIA ELECTRONIC MAIL AND OVERNIGHT DELIVERY

George Benaour, Esq.
BENAUR LAW LLC
43 West 43rd Street, Suite 225
New York, New York 10036
Tel: (609) 216-6105
E-Mail: george@benaurlaw.com

Re: Notice of Failure to Make Required Payment and Demand for Cure

Dear Mr. Benaour:

Reference is made to the First Amended Settlement Agreement and Mutual Releases (“the Agreement”) dated June 11, 2019, between my clients, Dr. Randy Rosen and Liza Vismanos, on the one hand, and your client Philippe Hoerle-Guggenheim (“Guggenheim”), on the other.

Pursuant to Paragraph 2(ii) of the Agreement, Guggenheim was required to make payment of \$25,000 to my firm’s client trust account by the close of business Friday, November 15, 2019. No such payment has been received.

Pursuant to Paragraphs 4 and 22 of the Agreement, Notice is hereby given that Guggenheim is in breach of the Agreement and if payment is not made within five business days, Guggenheim shall be deemed to be in breach of the Agreement. Plaintiffs will therefore file the “Stipulation for Entry of Judgment Against Defendant Phillippe Hoerle-Guggenheim,” (Exhibit A to the Agreement) with the Court, along with other appropriate filings in accordance with the terms of the Agreement.

If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Jonathan Steinsapir', written over a horizontal line.

Jonathan Steinsapir

George Benaux, Esq.
November 18, 2019
Page 2

cc: Steven A. Heath, Esq. (by email only to saheath@heathsteinbeck.com)

11573.00002/671339